

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicants: James J. Crow; Dennis L. Parker

Assignee: Motive, Inc.

Title: BROADBAND SERVICE CONTROL NETWORK

Application No.: 09/542,602 Filed: April 4, 2000

Examiner: Adnan M. Mirza Group Art Unit: 2141

Docket No.: MTV0014US Confirmation No.: 5339

Austin, Texas
July 17, 2006

Mail Stop AF
COMMISSIONER FOR PATENTS
P. O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicants hereby request review of the final rejection, mailed March 15, 2006, in the above-identified application. This Request is being filed concurrently with a Notice of Appeal. No amendments are being filed with this request.

This review is requested for the reasons set forth in the Remarks section, which begins on page 2 of this document.

REMARKS

Applicants hereby review request of the Final Office Action dated March 15, 2006, in the above-identified application. This request is being filed concurrently with a Notice of Appeal. No amendments are being filed with this request. This review is requested for the reasons set forth below.

Applicants received a Final Office Action dated March 15, 2006 rejecting all pending claims 16-40 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,335,927 issued to Elliott et al. ("Elliott"), and further in view of U.S. Patent Application Publication No. 2002/0095400 filed by Johnson et al, ("Johnson"). Applicants assert that Johnson as applied in the Final Office Action is not prior art against the pending claims.

Johnson was published July 18, 2002, based upon an application that was filed June 12, 2001. Johnson was filed as a continuation-in-part of Application Number 09/797,200 filed on March 1, 2001, which in turn claims priority to Provisional Application Number 60/246,401 filed on November 7, 2000 and Provisional Application Number 60/187,211 filed on March 3, 2000. Of all the foregoing dates, only March 3, 2000 predates the filing of the instant application. Applicants will show that Johnson should not be afforded the March 3, 2000 priority date for the subject matter cited against the claims of the instant application.

16. A method for managing a plurality of services located on a plurality of servers as an extensible service bus, comprising:

providing a registration service where an agent machine can register as a subscriber with the extensible service bus and receive a subscriber identification;

providing a login service where the agent machine can connect to the extensible service bus using the subscriber identification;

providing a service map management service that receives server location information from each of the plurality of services;

generating a service location map comprising a listing of the plurality of the services included on the extensible service bus and server location information corresponding to each service of the listing;

providing a connection status service to monitor the connection status of subscribers and the servers connected to the extensible service bus; and

providing a network control service, wherein the network control service causes a setting on a network device to change to establish a network physical connection to the agent machine, and the network physical connection complies with a requirement for the agent machine to use one of the plurality of services.

The Final Office Action on the top of page 3 asserts that Elliott discloses all the limitations of claim 16 except for “providing a registration service where an agent machine can register as a subscriber with extensible service bus and receive a subscriber identification; providing a log on service where the agent machine can connect to the extensible service bus using the subscriber information.” The Final Office Action then asserts that Johnson teaches these missing limitations. Specifically, the Final Office Action on page 3 asserts that Johnson discloses “content delivery bandwidth utilization by individual content supplier or users may be tracked and logged by system management engine enabling an operator of the content supplier or users may be tracked and logged by system management engine enabling an operator of the content delivery system to charge each content supplier or user on the basis of the content volume delivered” and “non-continuous and/or stored information management of unique/non-unique information anticipated number of simultaneous subscribers and/or simultaneous stream event duration, system resources per subscriber” citing page 10, paragraph 0095 and page 31, paragraph 0261, respectively, of Johnson in support thereof.

To paraphrase page 10, paragraph 0095 and page 31, paragraph 0261, Johnson teaches a system that enables an operator of a content deliver system to charge each content supplier or user on the basis of the content volume delivered and a system with the ability to define objectives including an anticipated number of simultaneous subscribers or system resources per subscriber. For the purpose of this pre-appeal request only, Applicants will presume that page 10, paragraph 0095 and page 31, paragraph 0261 teach the limitations of claim 16 missing from Elliott (i.e., a registration service where an agent machine can register as a subscriber with the extensible service bus and receive a subscriber identification; providing a log on service where the agent machine can connect to the extensible service bus using the subscriber identification). Notwithstanding this presumption, page 10, paragraph 0095 and page 31, paragraph 0261 of Johnson can be prior art to claim 16 only if Provisional Patent Application 60/187,211 filed on March 3, 2000, teaches or fairly suggests page 10, paragraph 0095 and page 31, paragraph 0261. In other words, the rejection of claim 16 must fall if Provisional Patent Application 60/187,211 fails to teach or fairly suggest, “A system that enables an operator of the content deliver system to charge each content supplier or user on the basis of the content volume delivered and a system with the ability to find objectives including anticipated number of simultaneous subscribers or system resources per subscriber” as paraphrased above.

Provisional Application 60/187,211 is entitled 'A System and Apparatus for Increasing File Server Bandwidth' and relates to routing data throughout networks. See Provisional Patent Application 60/187,211, page 1. A summary of the Provisional Patent Application 60/187,211 is described on page 7 thereof:

In a particularized form, the present invention provides carrier class communications gear that is optimized for high volume, high speed, autonomous data transport from disk storage to IP networks as well as server-free Gigabit data transport for autonomous file downloading and data streaming, zero overhead throughput bandwidth scalability, data integrity protection and wire-speed payload encryption, source node traffic shaping and load balancing, in addition to dynamic host-spot content bandwidth management is provided

The forgoing is substantially different when compared to "A system that enables an operator of the content deliver system to charge each content supplier or user on the basis of the content volume delivered and a system with the ability to find objectives including anticipated number of simultaneous subscribers or system resources per subscriber" (i.e., the paraphrased teachings of Johnson cited in the Office Action). More importantly, Applicants have reviewed the remaining contents of Provisional Patent Application 60/187,211 and can find no teaching or fair suggestion of "A system that enables an operator of the content delivery system to charge each content supplier or user on the basis of the content volume delivered and a system with the ability to define objectives including anticipated number of simultaneous subscribers or system resources per subscriber. Accordingly, Johnson should not be afforded the March 3, 2000, filing date of the 60/187,211 Application for the purposes set forth in the Final Office Action.

Independent claims 22 - 24 recite limitations similar to the registration service and log on service of independent claim 16. For the reasons set forth above, Applicants believe independent claims 22 - 24 are likewise patentably distinguishable over the cited sections of Elliott and Johnson.

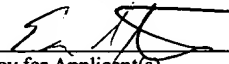
Independent claim 25 stands rejected under 35 U.S.C. § 103 as being unpatentable over Elliott in view of Johnson. Independent claim 25 is substantially different when compared to independent claims 16 and 22 - 24. However, the Office Action has failed to

identify specific sections of Elliott and Johnson where the limitations of independent claim 25 can be found. Applicants request withdrawal of the rejection of independent claim 25, or in the alternative, Applicant requests specific citations within Elliott and Johnson where the limitations of independent claim 25 can be found.

The remaining claims of the instant application depend directly or indirectly from claims 16 and 22-25. Insofar as these independent claims have been found to be patentably distinguishable or otherwise not specifically treated in the Office Action Response, the remaining dependent claims are likewise patentably distinguishable or not treated in the Office Action Response.

CONCLUSION

Applicants assert that the application is in condition for allowance and respectfully request that a finding withdrawing the final rejection of the claims be issued.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop <u>AE</u> , Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450, on <u>7/17/06</u> .	
 Attorney for Applicant(s)	<u>7/17/06</u> Date of Signature

Respectfully submitted,



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